

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA,	:	
	:	
	:	
v.	:	
	:	CRIMINAL ACTION NO.
RENE ALQUICIRI-ALVAREZ.,	:	1:02-CR-0414-05-RWS
	:	
Defendant.	:	
	:	
	:	

**ORDER**

This case comes before the Court on Petitioner's Motion for Leave to File his Appeal *in Forma Pauperis* [256]. After a review of the record, the Court enters the following order.

Petitioner originally proceeded to trial on March 23, 2003. On March 28, 2003, Petitioner pleaded guilty to charges including conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841, 846 and possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841. On July 29, 2003, Petitioner was sentenced to 151 months on both counts to run concurrently. Petitioner appealed to the Eleventh Circuit Court of Appeals which affirmed his sentence by an order entered March 5, 2004.

On March 1, 2005, Defendant filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence [238]. In that Motion, Defendant raised Apprendi issues regarding his having been assessed points for obstruction of justice. He did not challenge the Indictment. On April 11, 2005, the Court entered an Order [241] denying Defendant's Motion. Defendant filed an appeal, and on October 14, 2010, the Court of Appeals dismissed the appeal for want of prosecution [248].

On June 10, 2011, Defendant filed what the Court construed as an attempt by Defendant to file a second or successive 2255 motion. Because Defendant had not sought authorization from the Eleventh Circuit to file a second § 2255 petition, that motion was denied on April 9, 2012 [251]. As well, because the Court also found that reasonable jurists could not debate the basis for the Court's ruling, Defendant was denied a certificate of appealability.

On May 3, 2012, Defendant filed an appeal of the Court's April 2012 ruling, in spite of the fact that he was denied a certificate of appealability. This appeal is now before the Court on a frivolity review. Federal Rule of Appellate Procedure 24(a) provides, in part, as follows:

[A] party who has been permitted to proceed in an action in the district court *in forma pauperis* . . . may proceed on appeal *in forma pauperis* without further authorization unless, before or after the notice of appeal is filed the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

FED. R. APP. P. 24(a). An appeal is taken in good faith when the prospective appellant seeks review of an issue that is not frivolous. See Coppedge v. United States, 369 U.S. 438, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

In the instant case, for all the reasons stated in the Court's April Order [251], the Court concludes that any appeal in this matter would be frivolous as reasonable jurists would not debate the Court's prior Order. Accordingly, the Court hereby certifies that Petitioner's appeal is not taken in good faith. His Motion to Proceed on Appeal *in Forma Pauperis* [256] is **DENIED**.

**SO ORDERED**, this 9th day of July, 2012.



**RICHARD W. STORY**  
United States District Judge